***THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

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W.P.No. 700 OF 2005

% 28.01.2005

Between:

K.A.Padmanabham S/o.K.V.R.Somayajulu

... PETITIONERS

AND

The Government of Andhra Pradesh, rep.by the

Secretary, Law (LA&J) Courts, Law Department & Two others

...RESPONDENTS

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! COUNSEL FOR THE PETITIONER: Sri K.V.Subrahmanya Narusu

^ COUNSEL FOR THE `RESPONDENTS: G.P. for Law & Legislative Affairs.

< Gist:

> Head Note:

? CITATIONS:

1 AIR 1993 S.C. 2436

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY EIGHTH DAY OF JANUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 700 of 2005

Between:

K.A.Padmanabham, s/o late K.V.R.Somayajulu,
r/o 21-29, Sri Nilayam, Old Police Station Street, Tanuku,

West Godavari District.

... PETITIONER

AND

1 The Government of Andhra Pradesh, rep., by the Secretary,

Law (LA&J)Courts, Law Department, Secretariat Buildings,
Secretariat, Hyderabad.
2 The District Collector, West Godavari District, Eluru.
3 Nasari Raja, s/o Surya Rao,
Opp:Sthree Samajam, Back side of Z.P.High School,

Tanuku, West Godavari District.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction, particularly a writ in the nature of mandamus, declaring the G.O.Rt.No.45 Law (LA& J) Courts, A.P.Department, dt.12-01-2005 appointing 3rd respondent as Addl.Public Prosecutor of Asst.Sessions Judge's Court, Tanuku, as illegal and pass such other order or orders.

Counsel for the Petitioner: MR.K.V.SUBRAMANYA NARASU

Counsel for the Respondents 1&2: GP FOR LAW & LEGISLATIVE AFFAIRS

The Court at the admission stage made the following :

ORDER:

The petitioner is a practicing advocate in the Courts at Tanuku. The post of Additional Public Prosecutor in the Court of Assistant Sessions Judge, Tanku, has fallen vacant. Steps were initiated in accordance with Section 24 of Cr.P.C., for appointment of an incumbent to the post. Petitioner asserts that the names of himself, the 3rd respondent and another were recommended by the District and Sessions Judge, West-Godavari, Eluru, and the panel was forwarded to the District Collector, the 2nd respondent. According to him, the 2nd respondent inserted the name of another advocate, on his own accord, and forwarded the panel to the 1st respondent. Through order in G.O.Rt.No.45, dated 12-01-2005, the 1st respondent appointed the 3rd respondent as Additional Public Prosecutor, for a term of three years. The petitioner challenges the same.

Sri K.V. Subrahmanya Narusu, learned counsel for the petitioner submits that the procedure prescribed under Section 24 Cr.P.C., is very clear, and it does not permit of inclusion of any names, by the District Collector, on his own accord. He contends that though the person, whose name was included by the 2nd respondent, was not appointed, there is a serious blow to the entire consultative process, and thereby the impugned order is vitiated. Placing reliance upon the judgment of the Supreme Court in ***Harpal Singh Chauhan v. State of U.P.***,[1] learned counsel submits that wherever violation of the procedure prescribed under Section 24 Cr.P.C., the entire proceedings may be vitiated.

Learned Government Pleader for Home, on the other hand, submits that except making vague allegation that the 2nd respondent has included the name of an advocate in the panel, on his own accord, no material is placed before this Court. He

contends that the respondents 1 and 2 followed the procedure prescribed under Section 24 Cr.P.C., meticulously, and the impugned proceedings are not vitiated in any manner.

The matter of appointment of Public Prosecutors and Additional Public Prosecutors to the concerned Courts is governed by the procedure prescribed under Section 24 of Cr.P.C. Sub-section (4) thereof mandates that the District Magistrate (Collector) shall prepare a panel of names of persons in consultation with the District and Sessions Judge, for the purpose of appointment of Public Prosecutors and Additional Public Prosecutors. It is not in dispute that the name of the 3rd respondent was figured in the panel as advocate, prepared by the 2nd respondent, in consultation with the District and Sessions Judge. Once that is so, the High Court in exercise of powers under Article 226 of the Constitution of India, cannot embark on assessment of relative merits of the candidates. It is for the appointing authority, namely, the 1st respondent to choose the advocate, by itself, from among the panel for appointment as Public Prosecutor. The allegation of the petitioner that the 2nd respondent included the name of the advocate, on his own accord, is not even *prima facily* substantiated so as to enable this Court to require the respondents 1 and 2 to answer the same. This Court cannot undertake a roving enquiry in the matter, in the absence of definite allegations.

The subject matter of the decision relied upon by the learned counsel for the petitioner was the extension of the term of existing incumbents. It was held that there is nothing like renewal or extension of appointment of Public Prosecutors under Section 24 Cr.P.C., and the entire procedure applicable for appointment applies for extending the term of the existing incumbents. Such a question does not arise in this case. Further, the Supreme Court laid down the parameters of interference by the Courts in such matters. It was held that the Court can examine whether there was any infirmity in the decision making process. It cautioned that, in doing so, the Court cannot substitute its own judgment over the panel decision taken, in respect of selection of persons, for those posts. As observed in the preceding paragraphs, there must exist some material, so as to enable the Court to initiate the process of examining the decision making process. In the absence of a definite allegation, which goes to the route of the matter, it is difficult for this Court to undertake such an enquiry. It is not as if the name of the 3rd respondent was inserted by the 2nd

respondent, without consultation with the District and Sessions Judge. Therefore, this Court does not find any basis to entertain the writ petition. The same is accordingly dismissed. There shall be no order as to costs.

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L. NARASIMHA REDDY, J.

Dt. 28–01-2005.

Note: L.R.copy to be marked.

(B/o)

KO

(One fair copy to the Hon'ble Sri Justice L.Narasimha Reddy,

(For his Lordship's kind perusal)

To

1 The Secretary, Law (LA&J)Courts, Law Department,

Government of Andhra Pradesh, Secretariat Buildings,
Secretariat, Hyderabad.

2 The District Collector, West Godavari District, Eluru.

3 Two C.Cs to the Govt.Pleader for Law & Legislative Affairs,

High Court buildings, Hyderabad (OUT).

4 8 L.R.Copies

5 The Under Secretary, Union of India, Ministry of Law,

Justice and Company Affairs, New Delhi.

6 The Secretary, A.P. Advocate’s Association, Library,

High Court Buildings, Hyderabad.

7 Two C.D.copies.

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